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August 3, 2021

Via Email

Honorable George Gascón
Los Angeles County District Attorney
Hall of Justice
211 West Temple Street
Los Angeles CA 90012

SUBJECT: Concerns Regarding Special Directive Policies Impacting Public Safety

Honorable District Attorney:

The City Council of the City of Rancho Palos Verdes acknowledges receipt of your July 21, 2021 letter. Unfortunately, your letter arrived after the community urged the Council to adopt its resolution of "no-confidence" at the City Council meeting of July 20, 2021. The City does appreciate your thoughtful comments.

Like you, the City Council acknowledges that reforms within the criminal justice system are warranted. However, criminal justice reforms that go to an extreme will, in our view, actually serve to undermine public safety.ⁱ It is out of our concern for public safety and for the victims of criminal conduct that, for the reasons that will follow, we must respectfully disagree with your directives which we view as "extreme." For example, the *Humphrey* decision, to which your letter makes reference, does require that a court review three criteria in making a bail determination.ⁱⁱ But, our Supreme Court certainly does not go as far as your Special Directive 20-06.

Your "extreme" special directive, on the other hand, commands that your staff "**shall not** request cash bail for **any** misdemeanor, non-serious felony, or nonviolent felony offense." We are advised that the maximum discretion your directive authorizes is for your prosecutors to request that a court impose the "least restrictive means" which you describe as anything from "no conditions" to electronic monitoring or home detention. For the community of Rancho Palos Verdes, this policy strays far beyond the requirements of the California Supreme Court and represents a significant danger to public safety.ⁱⁱⁱ

We are equally troubled by your "extreme" Special Directive 20-07 which declines to prosecute certain misdemeanor charges, including trespassing, disturbing the peace,

criminal threats, drug and paraphernalia possession, under the influence of controlled substance, public intoxication, and resisting arrest. The study to which you cite, and upon which you seem to rely for your directive, hardly offers a conclusive endorsement of this directive.

In the words of the authors of that study, the very most that can be said of their analysis is that “(o)ur findings **imply** that not prosecuting marginal nonviolent misdemeanor defendants substantially reduces their sub-sequent criminal justice contact. . . .” (Emphasis added.) Particularly concerning to the City Council is the prospect that, under your directive, many serial misdemeanants will never be prosecuted for their chronic violations. We urge you to consider that such individuals can wreak havoc on a community and make our residents feel unsafe in their own homes and neighborhoods.

Most “extreme,” in our view, is your Special Directive 20-08 & 20-08.2. This directive provides that “[i]f the charged offense is probation-eligible, probation **shall be the presumptive offer** absent extraordinary circumstances warranting a state prison commitment.” (Emphasis added.) Unfortunately, our research indicates that nearly every crime is probation eligible, up to and including murder. Carjacking is probation eligible. Kidnapping is probation eligible.^{iv}

What typically results in an alleged crime being **ineligible** for probation is the addition of a sentencing enhancements; the use of a deadly weapon or infliction of great bodily injury for example. Since the filing of all but a handful of sentencing enhancements is prohibited under your directive, we are concerned that this means that nearly every crime remains probation eligible. Moreover, your directive does not define what constitutes an “extraordinary circumstance” that would justify a deviation from your directive. As we understand your policy, your prosecutors **are required** to offer a plea bargain that results in the defendant going home on probation rather than serving time in custody.

We have also reviewed the additional study to which your letter makes reference. For our part, we would urge you to carefully consider the peer reviewed study prepared by the Criminal Justice Legal Foundation, entitled “*Sentence Length and Recidivism: A Review of the Research*” which we view as reaching a contrary conclusion. We are advised that data available from the U.S. Department of Justice demonstrates that the number of crimes committed during the years that California enacted and enforced tough sentencing for habitual felons, crime rates dropped dramatically. Comparing crimes reported in 1992 with 2011, there were 932,996 (45%) fewer of the seven major crimes, 190,681 (55%) fewer violent crimes, and 2,129 (54%) fewer murders.

As a consequence, the City feels an obligation to support the actions taken by your Deputy District Attorneys’ Association in successfully challenging some of your directives before the Los Angeles County Superior Court. We have directed the City Attorney’s office to closely monitor the appeal of this case (Los Angeles County Superior Court Case No. 20STCP04250, Second Appellate District Case No. B310845). Notwithstanding, the City appreciates that you have agreed to abide by the decision of the lower court. Please

understand that our support for this lawsuit is not intended as an affront to you personally or professionally, but rather as a respectful way to oppose what we believe are “extreme” directives that are contrary to the best interests of justice.

Finally, the City is strongly supportive of those policies that protect public safety, particularly through the provision of mental health and social services; respectfully, your directives undermine crime deterrence and prevention, considering that many proposed pre-filing diversion programs are either unfunded or have yet to be created. We urge you to reevaluate your directives in light of the concerns raised in this letter and the unintended adverse impacts the same are having on public safety on Los Angeles County residents.

Sincerely,



Eric Alegria
Mayor, City of Rancho Palos Verdes

cc: L.A. County Board of Supervisors
Jeff Kiernan, League of California Cities
Marcel Rodarte, California Contract Cities Association
Jackie Bacharach, South Bay Cities Council of Governments
Rancho Palos Verdes City Council and City Manager
Captain James Powers, Lomita Station, L.A. County Sheriff's Department
Association of Deputy District Attorneys

¹ In an “op. ed.” piece, dated June 21, 2021, entitled “*It’s Time for Californians to Recognize that Prop. 47 Criminal Justice Reform Failed*,” The Times of San Diego observed that “San Diego County [is] inundated with property crime But even if the crime victim has a video of the thief stealing a package off a porch or a bicycle from the driveway, not much will be done to apprehend the perpetrator due to . . . restrictions imposed by Proposition 47. This proposition, approved by voters in 2014, makes it almost impossible to incarcerate shoplifters and thieves. Proposition 47 it is a failed experiment in criminal justice reform that needs to be changed so we can put a stop to property crime. . . . The intent of the law is admirable, but the unintended consequences are a public safety disaster for San Diego residents and store owners.”

² The *Humphrey* opinion sets forth a three-part framework to assist courts in making a bail determination:

Non-Financial Conditions. provided “the record reflects the risk of flight or a risk to public or victim safety, the court should consider whether nonfinancial conditions of release may reasonably protect the public and the victim or reasonably assure the arrestee’s presence at trial.”

Money Bail The Defendant Can Reasonably Afford to Pay. “If the court concludes that money bail is reasonably necessary, then the court must consider the individual arrestee’s

ability to pay, along with the seriousness of the charged offense and the arrestee's criminal record, and—unless there is a valid basis for detention—set bail at a level that the arrestee can reasonably afford.”

Pretrial Detention Order. “[I]f the court concludes that public or victim safety, or the arrestee's appearance in court, cannot be reasonably assured if the arrestee is released, it may detain the arrestee only if it first finds, by clear and convincing evidence, that no nonfinancial condition of release can reasonably protect those interests.”

³ We are advised that the following is a non-exhaustive list of crimes that are considered neither serious nor violent which thus qualify for zero cash bail under your policy: Solicitation to commit murder; Felony assault by means of force likely to produce great bodily injury in violation of Penal Code § 245(4)(a); False imprisonment to prevent arrest such that it increases the risk of harm to the victim in violation of Penal Code § 210.5; Felony domestic violence resulting in a traumatic condition in violation of Penal Code § 273.5; Felony use of force or threats against a witness or victim of a crime in violation of Penal Code § 140; Felony resisting a peace officer and causing serious injury in violation of Penal Code § 148.10; A felony hate crime with present ability to commit violent injury, or which does cause injury pursuant to Penal Code § 422.7; Felony elder or dependent adult abuse likely to cause great bodily harm or death in violation of Penal Code § 368(b)(1) ; Molestation of a child aged 15 and older in violation of Penal Code § 288(c); Sexual penetration of a mentally disabled or developmentally disabled victim, a drugged victim, or an unconscious victim in violation of Penal Code § 289(b), (d) or (e); Sodomy of a mentally disabled or developmentally disabled victim, a drugged victim, or an unconscious victim in violation of Penal Code § 286(f), (g), or (i) ; Oral copulation of a mentally disabled or developmentally disabled victim, a drugged victim, or an unconscious victim in (of Penal Code § 287f), (g), or (i) ; Human trafficking of a minor for commercial sex acts in violation of Penal Code § 236.1(c)(1).

⁴ Moreover, as you acknowledge, the voters of California rejected Proposition 25 which would have eliminated cash bail.

⁵ This “extreme” directive, in our view, only facilitates recidivism among offenders. As you know, California has among the highest rates of recidivism in the nation. According to a 2012 report by the California Department of Corrections and Rehabilitation, more than Sixty-five percent of those released from California's prison system return within three years. Seventy-three percent of the recidivist committed a new crime or violated parole within the first year. These numbers have not changed significantly over the years. A probation-presumptive directive will, in our judgment, only embolden lawlessness rather than protect our community.